IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

Writ Petition No. 7331 of 2003

Haresh Shankar Raut .. Petitioner
V/s.
The State of Maharashtra & Ors. .. Respondents

Mr. Ajit R. Pitale for the Petitioner.
Mr. C.R. Sonawane, AGP. for the Respondent Nos. 1 and 3.
Mr. D.V. Sutar for the Respondent No. 2.
Mr. R.V. More, for the Respondent No. 4.
Mr. Shantaram Dheple for the Respondent No. 5.

CORAM : S. RADHAKRISHNAN &
S.A. BOBDE, JJ.
DATED : 05.10.2004.

P.C.:-

1. Heard the learned counsel for the Petitioner and the learned counsel for the Respondents. By this Petition, the Petitioner is challenging the order dated 3.9.2003 passed by the learned Collector, Thane, whereby the Petitioner was disqualified from continuing as a Member of the Village Panchayat. The Petitioner aggrieved thereby had preferred an Appeal before the learned Additional Commissioner, Konkan division, who has passed order dated 13.10.2003, rejecting the Appeal and confirmed the order of the Collector. All these orders are impugned in this Petition.

2. There is no dispute that the Petitioner's first child being a daughter Swati was born on 1.7.1996 and thereafter second daughter Rohini was born on 15.9.1999. Thereafter in May, 2000, the Petitioner was elected in Ward No. 3 of Talvali Arjunali Group Grampanchayat Tal-Bhiwandi, Dist.-Thane wherein he

became the Sarpanch. During the said tenure another

daughter was born to the Petitioner on 7.4.2002. In view thereof, the Respondent No. 5 had raised the issue that the Petitioner ought to be disqualified in view of the provisions of the Section 14(j-1) of the Bombay Village Panchayats Act, 1958, which reads as under:-

> **14 (1)** No person shall be a member of a panchayat continue as such, who -
>
> ....
> ....
>
> **(j-1)** has more than two children :
>
> Provided that, a person having more than two children on the date of commencement of the Bombay Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Act, 1995 (hereinafter in this clause referred to as "the date of such commencement", shall not be disqualified under this clause so long as the number of children he had on the date of such commencement does not increase:
>
> Provided further that, a child or more than one child born in a single delivery within the period of one year from the date of such commencement shall not be taken into consideration for the purpose of disqualification mentioned in this clause, or";
>
> (b) after Explanation 4, the following Explanation shall be added, namely:-
>
> "Explanation 5-For the purpose of clause (j-1)-
>
> (i) where a couple has only one child on or after the date of such commencement, any number of children born out of a single subsequent delivery shall be deemed to be one entity;
>
> (ii) ‘Child’ does not include an adopted child or children."

The aforesaid provision makes it abundantly clear that

if a Member of the Village Panchayat has more than two children, then such a Member will be disqualified.

Under the aforesaid facts and circumstances, the Collector, in view of the aforesaid admitted factual position disqualified the Petitioner from continuing as a Member of the said Village Panchayat. Even the learned Additional Commissioner has confirmed the same.

3. Shri Pitale, the learned counsel appearing on behalf of the Petitioner sought to contend that the Petitioner has actually given the second daughter Rohini in adoption in the year 2000, to his brother, who was childless. Under these circumstances, the contention of the learned counsel for the Petitioner is that the third child being born on 7.4.2002, shall not result in disqualifying as Petitioner from continuing as a Member of the Village Panchayat since on the relevant date the third child was born on 7.4.2002, the Petitioner only had one daughter i.e. 1st daughter, whereas the second daughter was already given in adoption to his brother.

4. The learned Assistant Government Pleader appearing on behalf of the Respondents brought to our notice a Judgment of the Supreme Court in **Javed and others v. State of Haryana (2003) 8 Supreme Court Cases 369**, wherein the Supreme Court has in fact dealt with the

very same issue of a person having more than two children giving away one child in adoption in paragraph no. 62, which reads as under:-

(4)

> 62. It was submitted that the enactment has created serious problems in the rural population as couples desirous of contesting an election but having living children more than two, are feeling compelled to give them in adoption. Subject to what has already been stated hereinabove, we may add that disqualification is attracted no sooner a third child is born and is living after two living children. Merely because the couple has parted with one child by giving the child away in adoption, the disqualification does not come to an end. While interpreting the score of disqualification we shall have to keep in view the evil sought to be cured and purpose sought to be achieved by the enactment. If the person sought to be disqualified is responsible for or has given birth to children more than two who are living then merely because one or more of them are given in adoption the disqualification is not wiped out.

5. The position of law is explicitly clear. The very purpose of the amendment is to prevent such a Member from increasing the population problem in India and if a person were allowed to have more than two children and thereafter keep on giving them in adoption, would escape the clutches of the above Section, which would render the above amendment itself nugatory. It is also brought to our notice that the above Judgment of the Supreme Court was followed in a Division Bench Judgment dated 23.6.2004 of this Court in Writ Petition No. 8318 of 2003. In view of the above judgment of the Supreme Court we are not inclined to interfere in the above Petition, the same stands dismissed.

(S. RADHAKRISHNAN, J.)

(S.A. BOBDE, J.)